

TRANSLATION

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 1193 B2131/A	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/CH2004/000635	International filing date (<i>day/month/year</i>) 22.10.2004	Priority date (<i>day/month/year</i>) 03.11.2003
International Patent Classification (IPC) or national classification and IPC A61 M25/01. A61 M25/00		
Applicant VON WEYMARN-SCHÄRLI, Alexander		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>7</u> sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising: a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>3</u> sheets, as follows: <input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-9 as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* 2-5 received by this Authority on 25.08.2005 with letter of 23.08.2005
- nos.* 1 received by this Authority on 24.02.2006 with telefax
- ☒ the drawings:
- sheets 1/2, 2/2 as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1.	Statement		
	Novelty (N)	Claims _____	YES
		Claims 1-5	NO
	Inventive step (IS)	Claims _____	YES
		Claims 1-5	NO
	Industrial applicability (IA)	Claims 1-5	YES
		Claims _____	NO
2.	Citations and explanations (Rule 70.7)		
1.	This report makes reference to the following documents:		
D1:	EP 0 371 486 A (ADVANCED CARDIOVASCULAR SYSTEM), 6 June 1990 (1990-06-06)		
D2:	US 5 542 938 A (AVELLANET ERNESTO ET AL), 6 August 1996 (1996-08-06)		
D3:	US 6 203 525 B1 (FLEISCHMAN SIDNEY D ET AL), 20 March 2001 (2001-03-20)		
D4:	WO 02/13899 A (BARD INC C R), 21 February 2002 (2002-02-21)		
2.	INDEPENDENT CLAIM 1		
	<p>The subject matter of claim 1 relates to two embodiments. In a first embodiment, the sheathing body and the inner body can rotate relative to one another so that the inner body lies at least in part on the sheathing body. In a second embodiment, magnetic fields along the length of the sheathing body and inner body generate a mutual attraction between the bodies.</p>		

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
2.1	<p>The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claim 1 (in its first embodiment) is not novel (PCT Article 33(2)).</p> <p>Document D3 discloses (see column 10, lines 11-29; and figures 1, 8b; the references in parentheses are to that document):</p> <p>a device, in particular a sluice or catheter, which is to be at least partially introduced into a body passage, having an elongated outer sheathing body (36), an elongated inner body (12, 28) the circumference of which is surrounded at least in part by the sheathing body, and an arrangement which makes it possible to intentionally control or at least hinder the relative mobility between the sheathing body and inner body (for the purpose of making the entire device more rigid or flexible), the control arrangement being formed by the arrangement and design of the sheathing body and inner body themselves, no additional mechanical means being arranged in the ring-shaped space between the sheathing body and the inner body. The material of the sheathing body and inner body is flexible but torsionally rigid, while the sheathing body and inner body have a (preferably polygonal) cross-section, so that the sheathing body and inner body can be rotated relative to one another by means of the control arrangement in such a way that the inner body lies at least in part on the sheathing</p>

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
	<p>body (figure 8B).</p> <p>2.2 The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claim 1 (in its second embodiment) is not novel (PCT Article 33(2)).</p> <p>Document D2 discloses (see column 6, line 55 - column 7, line 10; and figure 1A; the references in parentheses are to that document):</p> <p>a device, in particular a sluice or catheter, which is to be at least partially introduced into a body passage, having an elongated outer sheathing body (10), an elongated inner body (12) the circumference of which is surrounded at least in part by the sheathing body, and an arrangement which makes it possible to intentionally control or at least hinder the relative mobility between the sheathing body and inner body (for the purpose of making the entire device more rigid or flexible), the control arrangement being formed by the arrangement and design of the sheathing body and inner body themselves, no additional mechanical means being arranged in the ring-shaped space between the sheathing body and the inner body. The control arrangement and sheathing and inner bodies are designed in such a way that magnetic fields of different polarities can be generated along the length of the sheathing and inner bodies (see figure 1a) in order to selectively cause a mutual attraction between the</p>

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	<p>bodies.</p> <p>3. DEPENDENT CLAIMS 2-5</p> <p>Claims 3-5 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT novelty or inventive step requirements. See, for example:</p> <p>D1 (search report) in the case of claim 3</p> <p>D2 (search report) in the case of claims 4 and 5</p> <p>D4 (search report) in the case of claim 2</p>

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Box No. VIII **Certain observations on the international application**

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

4. The application does not meet the requirements of PCT Article 6 because claim 1 is unclear. Claim 1 attempts to define the invention in terms of the result to be achieved. It is also unclear how the control arrangement is designed and what is meant by the expression "no additional mechanical means are arranged".